उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(18)

मामला क्रमांक..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH BILASPUR

CRIMINAL APPEAL NO. 399 OF 2001

DIVISION BENCH **HON'BLE SHRI L.C. BHADOO, & HON'BLE SHRI DHIRENDRA MISHRA, JJ**

APPELLANTS

1. Chain Singh,
S/o Dohkuram Baiga,
Aged 32 years,
R/o Bakal, P.S. Kota,
District Bilaspur.
2. Samliya,
S/o Bhagwali Baiga,
Aged 36 years,
R/o Bakal, P.S. Kota,
District Bilaspur (C.G.)

Versus

RESPONDENT : State of Chhattisgarh,
Through The Police Station – Kota, Tahsil & District Bilaspur (C.G.)

Present

Mr. Akhil Agrawal, counsel for the accused/appellants.

Mr. G.D. Vaswani, G.A. for the State/respondent.

O R A L J U D G M E N T

(19th July 2007)

Per L.C. Bhadoo, J

The accused/appellants have preferred this appeal against the judgment of conviction and order of sentence dated 30th March 2001 passed by learned VI Additional Sessions

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Judge, Bilaspur in Sessions Trial No. 382/2000 whereby the learned Additional Sessions Judge after holding accused/appellant Chainsingh guilty for commission of the offence under Sections 302, 201 of the IPC, sentenced him to undergo imprisonment for life, pay a fine of Rs.1,000/- and to undergo R.I. for five years, to pay a fine of Rs.500/-, respectively and after holding the accused/appellant Samliya guilty under Sections 302/34, 201 of the IPC, sentenced him to undergo life imprisonment, pay a fine of Rs.1,000/- and to undergo R.I. for five years, pay a fine of Rs.500/- respectively. The sentences imposed upon both the accused persons were directed to run concurrently. In default to payment of fine amount under each section, they have to further undergo 6 months' S.I.

2. Case of the prosecution, in brief, is that on 5.7.2000 Beepatram gave merg intimation in the Police Station-Kota to the effect that he was at his residence, in the mid day Bhagbali Baiga came and informed him that the grand-son of Dohkuram is weeping and Dohkuram is lying dead in the kitchen garden, therefore, he should go to the market to inform the villagers. On receiving this information he went to Achanakmar market and informed Chainsingh that his father is lying dead, on which Chainsingh said "you people proceed, I am coming".

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	Thereafter, Beepatram came there along with other persons and saw the dead body of Dohkuram lying in the kitchen garden. There were injuries on the temporal region, arm & wrist of the left hand and on the left thigh. When he asked Chainsingh to lodge a repot, then he said that he does not know anything about the incident, therefore, what he will report. Then, at the instance of villagers Beepatram along with Kotwar Melaram went to lodge the report in Police Station Kota. On the basis of said report Merg No. 53/2000 was registered. The investigating officer left for the scene of occurrence. Based on memorandum (Ex.P/3) given by accused Chainsingh during the police custody, one lathi was seized under Ex.P/2. Bloodstained and plain soil was taken into possession under Ex.P/4. Clothes of the accused Chainsingh were seized under Ex.P/6. Clothes of the accused Samliya were seized under Ex.P/7. After giving notice (Ex.P/8) to the Panchas, he prepared inquest (Ex.P/9) on the dead body of Dohkuram. Site plan (Ex.P/11) was prepared. The dead body of Dohkuram was sent for postmortem examination to Community Health Center, Kota under Ex.P/12-A where Dr. A.K. Jha conducted postmortem and prepared the postmortem report (Ex.P/12). He opined that "no definite opinion regarding cause & mode of death can be given, time within seventy four hours of reporting (time of P.M.), viscera sent for analysis, nature to be	

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	investigated out by". In the postmortem report, he mentioned that froth was coming out from the nostrils & mouth, skin peeled off at places, underneath reddishness, blackness present over muscle, scrotum hanging, skin somewhere blackish & somewhere reddish, there were injuries over right thigh in the size of 3" x 2", over right thigh & leg in the size of 16" x 4", margin was not clear because of putrefaction being started, tongue bitten between teeth, face swollen and eyes protruded of the socket. After completion of the investigation charge sheet was filed against the accused/appellants in the Court of Chief Judicial Magistrate, Bilaspur who in turn committed the case to the Court of Sessions Judge, Bilaspur from where learned Additional Sessions Judge, received the case on transfer for trial. 3. Prosecution in order to establish the charge against the accused persons examined 12 witnesses. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the material appearing against them in the prosecution evidence and pleaded innocence and false implication in the crime in question. 4. Learned Additional Sessions Judge, after hearing counsel for the respective parties convicted and sentenced the accused/appellants as aforesaid.	

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

5. We have heard Mr. Akhil ~~Mishra~~ Agarwal, counsel appearing on behalf of the accused/appellants and Mr. G.D. Vaswani, G.A. for the State/respondent.

6. As far as homicidal death of Dohkuram is concerned, learned counsel for the accused/appellants has not disputed homicidal death of Dohkuram. Moreover, PW-8 Dr. A.K. Jha, who conducted postmortem on the dead body of Dohkuram has stated that maggots were present in the body, froth was coming out from the nostrils & mouth, skin was peeling off at places, there were reddishness and blackness over the body, scrotum was hanging, there were injuries over right thigh & leg in the size of 3" x 2" & 16" x 4", tongue was bitten between teeth, face was swollen, eyes were protruded from the socket, there was swelling on the whole body, injures were ante-mortem in nature and he stated that no definite opinion can be given regarding the death. If the postmortem report and condition of the dead body along with evidence of Itwari (PW-3) before whom the accused Chainsingh made extra judicial confession to the effect that he committed murder of his father as he found him in compromising position with his wife as also the evidence of Tiharinbai (PW-5), wife of Samliya, who stated that she saw accused Chainsingh committing the murder of his

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 6	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	father, are taken together the cumulative effect of the above evidence is that death of Dohkuram was homicidal in nature. 7. So far as involvement of the accused/appellants in crime in question is concerned, Sukaluram (PW-2) has stated that it is correct that on being asked by Itwari Baiga, accused Chainsingh disclosed that as he saw his father in a compromising position with his wife, he committed his murder by pressing his neck and assaulting him with umbrella and lathi with the help of Samliya. PW-3 Itwari has stated that accused Chainsingh made extra judicial confession before him that he committed murder of his father Dohkuram as his father had illicit relationship with his wife. PW-5 Tiharinbai, wife of accused Samliya, has stated that on the date of incident Chainsingh came to her house in the noon, asked her husband to accompany him to kill his father as he was having illicit relations with his wife, on which her husband went along with him. She followed them and saw that Chainsingh was assaulting his father and her husband was saying that he will not assault. In her cross-examination she has also stated that only Chainsingh was assaulting his father. Therefore, in view of above evidence it is established that accused Chainsingh was author of the crime in question.	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	8. As far as conviction of accused Chainsingh under Section 201 of the IPC is concerned, there is noting on record to suggest that he tried to cause disappearance of evidence regarding murder of his father in order to screen himself from legal punishment. Therefore, his conviction under Section 201 of the IPC cannot be sustained. 9. As for conviction of the accused Samliya under Sections 302/34 and 201 of the IPC, the eyewitness PW-5 Tiharinbai has categorically has stated that accused Chainsingh committed murder of his father. She has stated that accused Chainsingh asked her husband to help him in committing the murder of his father Dohkuram, on which he said that he will not help him and will not commit the murder of Dohkuram. In her cross-examination she has further stated that her husband did not assault Dohkuram and only Chainsingh was assaulting him. Moreover, the extra judicial confession was made by accused Chainsingh, not by accused Samliya. Apart from that, though PW-2 Sukaluram has stated that accused Chainsingh said that he along with Samliya committed the murder of his father Dohkuram but Itwari (PW-3) has stated that accused Chainsingh said that he committed murder of his father. Except the evidence of PW-2 Sukaluram there is no other corroborative, circumstantial or other evidence to establish that	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश ९	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

accused Samliya was involved in committing the murder of Dohkuram or in any manner he tried to cause disappearance of the evidence of murder in order to screen himself from legal punishment. Therefore, conviction of accused Samliya under Sections 302/34, 201 of the IPC cannot be sustained as the same is not based on legal clinching evidence.

10. Mr. Akhil Agarwal, learned counsel appearing on behalf of the accused/appellants argued that from the evidence of PW-5 Tiharinbai, extra judicial confession made before PW-3 Itwari by accused Chainsingh and the evidence of Tiharinbai (PW-5) who has stated that as the accused Chainsingh saw his father in a compromising position with his wife that is why he came to her house, asked her husband to accompany him to commit his murder and even from the evidence of Sukvariya, wife of accused Chainsingh who has also stated in her evidence that her father-in-law Dohkuram used to have sexual intercourse with her, it is evident that accused Chainsingh after seeing his father in a compromising position with his wife, could not control his temper, he was provoked and therefore, in a hit of passion he assaulted his father Dohkuram, as a result of which he died. Therefore, the offence against accused Chainsingh does not travel beyond Section 304-II of the IPC.

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मामला क्रमांक ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 9	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

11. In the result, the appeal of accused/appellant Chainsingh is partly allowed. His conviction and sentence imposed upon him under Section 302, 201 of the IPC are set aside. Instead thereof, he is convicted under Section 304-II of the IPC and sentenced to undergo seven years R.I. It is stated that he is in detention since 6th July 2000, as such he has already completed seven years rigorous imprisonment imposed upon him. Therefore, he be set at liberty forthwith if not required in any other case.

The appeal of accused/appellant Samliya succeeds. His conviction under Section 302/34, 201 of the IPC and sentence passed thereon, are set aside. He is acquitted of the above charges. He be set at liberty forthwith if not required in any other case.

Sd/-
L.C. BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

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